Commonwealth of Massachusetts
State Ethics Commission

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SUFFOLK, ss. **COMMISSION**
ADJUDICATORY

DOCKET NO. 607

IN THE MATTER
OF
JAMES MAZAREAS

Appearances: Karen Beth Gray, Esq.
Counsel for Petitioner

John C. McBride, Esq.
Counsel for Respondent

Commissioners: Wagner, Ch.,, Cassidy, Roach and Dolan

Presiding Officer: Commissioner R. Michael Cassidy, Esq.

DECISION AND ORDER

I. Procedural History

On September 13, 2000, Petitioner initiated these proceedings by issuing an Order To Show Cause (OTSC) under the Commission's Rules of Practice and Procedure.[1] The OTSC alleged that Respondent, James Mazareas (Mazareas) in his capacity as Superintendent of Schools for the City of Lynn, violated G. L. c. 268A, § 19 by appointing his wife, Jean Mazareas (Jean) to two positions in which she had financial interests. One position was on a transition team (Team), which the City's School Committee allegedly authorized to develop a reorganization plan for the new Superintendent. Jean allegedly received $600 compensation for her work on the Team. The other position was to facilitate a summer curriculum workshop (Workshop). Based on the hourly rate set by a union contract, Jean allegedly received a total of approximately $8,918.25 for her services on the Workshop. The OTSC also alleged that Mazareas violated G. L. c. 268A, § 23(b)(3) by making the same two appointments.

Finally, the OTSC alleged that Mazareas violated G. L. c. 268A, § 23(b)(3) by participating in a decision to transfer Jean from a federally funded position within the School Department to a similar position on the City's payroll (Transfer).

On October 10, 2000, Mazareas filed an Answer to the OTSC. A Pre-hearing conference was held on January 23, 2001. On April 6, 2001, the parties submitted joint Stipulations of Fact (Stipulation). On June 15, 2001, the parties also stipulated that Mazareas was the "appointing authority" for the Workshop.

An evidentiary hearing was held on May 4 and August 22, 2001. After the conclusion of the evidentiary portion of the hearing, the parties submitted legal briefs on October 19, 2001.

The parties presented closing arguments before the full Commission on December 19, 2001.[2] Deliberations began in executive session on December 19, 2001.[3]

In rendering this Decision and Order, each undersigned member of the Commission has considered only the testimony, evidence in the public record, including the hearing transcript, and arguments of the parties.[4]

II. Findings of Fact

1. As of early 1998, Mazareas was employed as the Associate School Superintendent for the City of Lynn.

2. The Associate Superintendent is appointed by the School Committee upon recommendation of the Superintendent.

3. As of early 1998, Jean, his spouse, was employed by the Lynn School Department as a staff development specialist and her salary and benefits were federally funded.

The Transfer

4. Mazareas became involved in a grievance with Jean's supervisor, Jaye Warry (Warry), in January 1998. The grievance evolved into a dispute between Warry and Mazareas that continued through at least May 20, 1998, when Mazareas requested that the Superintendent, James T. Leonard (Leonard), take disciplinary action against Warry for filing a false complaint against Mazareas.

5. Jean believed that the above circumstances were not "the most comfortable situation" and Mazareas felt that the whole situation caused stress to him and to Jean.[5]

6. In or about March 1998, Mazareas recommended to Superintendent Leonard that Jean be transferred from her federally funded position to a comparable staff position in the School Department on the City payroll. One of the reasons Mazareas recommended the transfer was that Warry would no longer supervise Jean.

7. In her new position on the City payroll, Jean reported to, and was supervised by, Mazareas.

8. Mazareas did not file a written disclosure with his appointing authority concerning his involvement in transferring Jean from her federally funded position to the comparable staff position on the City's payroll.

The Team

9. The School Committee of the City of Lynn elected Mazareas Superintendent on May 20, 1998 and authorized him to assume the position of Superintendent as of June 6, 1998.

10. In or about May 1998, the School Committee authorized Mazareas to create a transition team to develop a reorganization plan (Team).

11. The Team consisted of six people, Jan Birchenough, Alan Benson, Paula Fee, Tom Iarrobino (Iarrobino), Jean Mazareas and Anita Rassias. Mazareas asked Iarrobino, who is the secretary to the School Committee and the public information officer for all the public schools in the City, to serve on the Team to be its liaison to the School Committee and to keep the Committee informed about the progress and efforts of the Team.

12. Mazareas created the Team[6] to continue the work of the Internal Planning Committee, which was identifying the educational and fiscal needs of the public schools at the time that Leonard's administration as Superintendent was concluding. Dr. Lusiano "Lee" Orlandi, who was a consultant to the public schools, created the Internal Planning Committee in the fall of 1997.

13. Mazareas appointed Jean to the Team, effective June 8, 1998.[7]

14. At the time Mazareas made the decision to appoint Jean to the Team, he knew she would have a financial interest in being a member of the Team.[8]

15. Each member of the Team received a weekly stipend of $200 in addition to his or her regular salary. On June 23, 1998, Mazareas authorized the members of the Team to be paid the weekly stipends. The stipends were effective as of June 8, 1998. Jean received her stipend towards the end of the school year.

16. Jean received a total of $600 in compensation for her work on the Team.

17. Mazareas did not file a written disclosure with his appointing authority concerning his appointing Jean to the Team. There is no evidence that his appointing authority made any written determination about his appointing Jean to the Team.

The Workshop

18. Prior to the summer of 1998, Mazareas made the decision to appoint Jean to facilitate a curriculum workshop (Workshop).[9] The goal of the Workshop was to align the math, science, and English language arts curricula with the Massachusetts Curriculum Frameworks and the MCAS and to accomplish this goal before the opening of the school year 1998-1999.

19. Mazareas, as Superintendent, was the "appointing authority" for the Workshop.[10]

20. At the time Mazareas made the decision to appoint Jean to facilitate the Workshop, he knew that she would receive compensation for her Workshop duties in addition to her yearly compensation as a program development specialist.[11]

21. Pursuant to the terms of her union contract, which provided extra pay for work during the summer, Jean received a total of approximately $8,918.25 for her services on the Workshop.

22. On or about July 8, 1998, Mazareas stated the following in a letter to the School Committee:

> Please be advised that in accordance with Chapter 71, Section 67, of the Massachusetts General Laws,[12] Jean Mazareas is working part-time during the summer in her position as Program Specialist in charge of Staff Development.

The work that she will perform had been organized and determined prior to my appointment as Superintendent of Schools.

23. On or about July 9, 1998, Mazareas told Upton that Jean was not to be paid until Mazareas resolved the issue with the School Committee and he directed Upton not to pay her until after July 28, 1998.

24. Jean's pay for the Workshop was delayed approximately three weeks, but she was paid in August 1998.

25. Mazareas did not file a written disclosure with his appointing authority before his decision to appoint Jean to the Workshop and did not receive a written determination from his appointing authority about his decision to appoint Jean.

III. Decision

To prove a violation of G. L. c. 268A, § 19, the Petitioner must prove the following elements:

(1) a municipal employee;[13]

(2) participated;[14]

(3) in a particular matter;[15]

(4) in which, to his knowledge,[16] a member of his immediate family;[17]

(5) had a financial interest.

At all relevant times, Mazareas, in his capacity as Associate Superintendent or as Superintendent was a "municipal employee" defined in the conflict of interest law. As such, he was required to comply with G. L. c. 268A, § 19.[18] There is no question that Jean was a member of his "immediate family," as defined in the conflict law.

Decisions to appoint Jean to the Team and to facilitate the Workshop were "particular matters" as defined in G. L. c. 268A.

The Team

The issues are whether Mazareas participated in the particular matters and whether Jean had a financial interest in the particular matters. First, the evidence demonstrates that Mazareas participated in the decision to appoint Jean to the Team. The conflict law, in pertinent part, defines "participate" as "participate in agency action or in a particular matter personally and substantially . . . through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise." "Appoint" is defined as "to fix by a decree, order, command, resolve, decision or mutual agreement" or "to assign, designate, or set apart by authority."[19] Mazareas approved assigning Jean to the Team. Mazareas admitted that he appointed people to the Team. The School Business Administrator agreed that Mazareas appointed Jean to the Team. The parties stipulated that he appointed her to the Team.[20]

Notwithstanding this evidence, Mazareas argues that he did not appoint Jean to the Team but, rather, she continued in her School Department duties as a Team member without any action on his part.[21] In light of the contrary evidence, we do not find credible Mazareas' or Jean's testimony that her work on the Team was only a continuation of her work on the Internal Planning Committee which did not involve Mazareas' appointing her to the Team. Moreover, the Team was different from the Internal Planning Committee. Unlike the Committee, which was in existence to serve the prior Superintendent, the Team was created to assist the new Superintendent, Mazareas. The Team was paid, while the Internal Planning Committee was not. Accordingly, we find that Petitioner has proved, by a preponderance of the evidence, that Mazareas appointed Jean to the Team. As a result, he participated in the particular matter of the decision to appoint her.

The next issue is whether, "to his knowledge," Jean had a financial interest in his decision to appoint her to the Transition Team when he appointed her. Under the Commission's precedent, the financial interest for the purposes of § 19 may be of any size and may be either positive or negative so long as it is direct and immediate *or* reasonably foreseeable.[22] Financial interests that are "remote, speculative, or not sufficiently identifiable do not require disqualification."[23]

Mazareas admitted that at the time he appointed members to the Team, he knew Jean would have a financial interest in being on the Team. Team members were paid and Mazareas participated in the decisions to pay them, both through verbally asking the School Committee to allow him to give the Team school funds and by signing the payroll for the Team. Given his testimony combined with the evidence about Jean's compensation for her work on the Team, we find that Petitioner has proved, by a preponderance of the evidence, that Mazareas knew that Jean had a reasonably foreseeable financial interest in his decision to appoint her to the Team.

Accordingly, we conclude that Petitioner has proved, by a preponderance of the evidence, that Mazareas violated G. L. c. 268A, § 19 by appointing Jean to the Team.

The Workshop

Again, the first issue is whether Mazareas participated in the decision to appoint Jean to the Workshop. Mazareas stipulated to being the "appointing authority" for the Workshop so he was in a position to "personally and substantially" approve or recommend the decision to appoint her.

Mazareas admitted that he invited people to be part of the Workshop. Exhibit 19A, which is the April 8, 1998 memorandum from Mazareas to "Selected Secondary Personnel," states, "The purpose of this meeting is to give the invited potential workshop participants an overview of the work that must be done . . . ." The memorandum also indicates that a copy of the memo was sent to Jean. Exhibit 19B also refers to "invited participants." Stephen Upton, the School Business Administrator, testified credibly that Mazareas appointed people to the Workshop.[24] The Stipulation states that Mazareas appointed Jean. In light of this evidence, we do not find credible Mazareas' or Jean's contrary testimony that her work on the Workshop was only a continuation of her duties under her contract and did not involve Mazareas' participation in the decision to approve her being in the Workshop.

Mazareas knew that Jean had a financial interest in the decision to be appointed to the Workshop. He knew, at the time of appointment, that people would be paid to be in the Workshop because their employment agreements required additional compensation for this work. More specifically, Jean's contract required additional compensation for summer work. Mazareas admitted that it was his understanding that they would be paid. Accordingly, we find that Petitioner has proved, by a preponderance of the evidence, that Mazareas violated § 19 by participating in the decision to appoint Jean to the Workshop.

As noted above, § 19(b)(1) states that "it shall not be a violation . . . if the municipal employee *first* advises" his appointing authority "and receives *in advance* a written determination made"[25] by his appointing authority that the financial interest is not so substantial as to be deemed likely to affect the integrity of the municipal employee's services which the municipality may expect from him. For the following reasons, we conclude that Mazareas failed to avail himself of this exemption.[26]

First, the letter Mazareas wrote to the School Committee, dated July 8, 1998, was presented to the School Committee *after* he participated in the relevant particular matters. Next, the letter does not completely disclose his participation. Although the letter says that "the work" had been organized/determined *prior* to his precise appointment as Superintendent,[27] the letter does not disclose his involvement in organizing or determining the work when he was the Associate Superintendent and his role in appointing Jean to the Workshop or the Team. Finally, there is no evidence that he received a written determination back from the School Committee. Accordingly, we find that July 8, 1998 letter to the School Committee does not constitute a disclosure and determination under § 19(b)(1).

Section 23(b)(3)

To prove a violation of G. L. c. 268A, § 23(b)(3), Petitioner must prove the following elements:

(1) a municipal employee;

(2) who, knowingly, or with reason to know, acted in a manner;

(3) which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude;

(4) that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.[28]

The Transfer

Mazareas recommended transferring his wife from her federally funded position to a position on the City's payroll. The issue is whether Petitioner has demonstrated, by a preponderance of the evidence, that Mazareas knew or had reason to know that he was acting "in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that [Jean] . . . unduly enjoy[ed] his favor in the performance of his official duties, or that he [was] likely to act or fail to act as a result of kinship."

In upholding the Commission's interpretation of § 23(b)(3), the Supreme Judicial Court concluded:

> We have . . . noted that the purpose of the statute 'was as much to prevent giving the appearance of conflict as to suppress all tendency to wrongdoing.' . . The commission has stated that '[s]ection 23(b)(3) is concerned with the appearance of a conflict of interest as viewed by the reasonable person,' not *whether preferential treatment was given*. . . The commission has chosen to interpret this statute as a prophylactic measure, and the language of the statute accords with its interpretation.[29]

The Commission's precedent has concluded that "acting in a manner" refers to the taking of official action as a public employee.[30] "The Commission . . . evaluate[s] whether the public employee is poised to act in his official capacity and whether, due to his private relationship or interest, an appearance arises that the integrity of the public official's action might be undermined by the relationship or interest."[31]

The fact that Mazareas knew that he was recommending transferring his wife shows that he was aware of kinship when he acted.[32] The additional fact that he was involved in a dispute with his wife's supervisor in the federally funded position also shows that there were other circumstances, upon which a reasonable person could conclude, which could have affected his decision to transfer Jean. Both Mazareas and Jean testified that they were uncomfortable about his working relationship with her supervisor, that the situation caused stress to him and to Jean, and that these circumstances motivated her transfer. Under these circumstances, a reasonable person could conclude that he acted (on the recommendation to transfer) as a result of kinship or that Jean unduly enjoyed his favor in Mazareas' performance of that official duty.

A written disclosure of "the facts which would otherwise lead to such a conclusion" makes it unreasonable to so conclude that the public official was acting "in a manner . . . ." But, such a disclosure must be made "in writing to his appointing authority . . ." in advance of the action.[33] Here, there is no evidence that Mazareas provided a written disclosure to the School Committee, his appointing authority,[34] prior to recommending to the Superintendent that Jean be transferred. The only written disclosure in the record is his March 23, 1998 memorandum, after Mazareas first recommended that Jean be transferred, to the then Superintendent, James T. Leonard. The memorandum said that Leonard had orally approved the transfer in early March and recommended to Leonard that the transfer should be made immediately. Moreover, the parties have stipulated that Mazareas did not provide a § 23(b)(3) disclosure.

Accordingly, we conclude that the Petitioner has proved, by a preponderance of the evidence, that Mazareas violated § 23(b)(3) with respect to the Transfer.

The Appointments to the Team and the Workshop

We have said that the same conduct may be deemed to violate both §§ 19 and 23(b)(3).[35] We have also consistently advised governmental officials that they should file a § 23(b)(3) disclosure to avoid violating § 23(b)(3) when acting on matters of interest (but not of financial interest under § 19) to immediate family members.[36]

Although there is evidence that Jean's area of expertise and prior involvement in the Internal Planning Committee supported Mazareas' decision to appoint her to the Team and the

Workshop, a reasonable person under these circumstances must also consider facts that Jean was Mazareas' wife and the financial interest she had in each decision.

Because the language of § 23(b)(3) includes the phrase "having knowledge of the relevant circumstances," our analysis must be fact specific and the conclusion limited to the facts. Here, the determination is whether, having knowledge of the relevant facts about the Team and Workshop, including Jean's financial interests in the work for both, and Jean's pre-existing responsibilities and qualifications, a reasonable person could conclude that Mazareas knowingly or with reason to know was likely to act or fail to act as a result of kinship by appointing his wife to these paid positions.

Again, § 23(b)(3) is concerned about a conflict of interest "'as viewed by the reasonable person,' not whether preferential treatment was given."[37] We conclude that the facts of kinship coupled with Jean's financial interest in both appointments are sufficient together to prove that Mazareas knowingly or with reason to know "act[ed] in a manner which would cause a reasonable person . . . to conclude that . . . [he was] likely to act . . . as a result of kinship . . . ."

Although the parties have stipulated that Mazareas did not file a disclosure under § 23(b)(3) with respect to his appointing Jean to the Team and to the Workshop, there is the issue of whether the July 8, 1998 letter from Mazareas to the School Committee constitutes a § 23(b)(3) disclosure. As discussed above with respect to § 19, the letter was presented to the School Committee **after** he made both appointments. Moreover, the letter disclosed facts about only the Workshop. As noted above, the purpose of the § 23(b)(3) disclosure is to give the appointing authority an opportunity "to review the situation and take whatever steps he may deem to be appropriate to protect the public interest."

Thus, we conclude that Mazareas has not proved, by a preponderance of the evidence, that the July 8, 1998 letter constituted a disclosure for purposes of § 23(b)(3).[38] Accordingly, we conclude that Petitioner has proved, by a preponderance of the evidence, that Mazareas violated § 23(b)(3) by appointing Jean to the Team and by appointing her to the Workshop.[39]

IV. Conclusion

In conclusion, Petitioner has proved by a preponderance of the evidence that James Mazareas violated G. L. c. 268A, § 19 on two occasions by participating in a decisions in which his wife had financial interests: the decision to appoint Jean to the Team and the decision to appoint her to the Workshop. The Petitioner has also proved by a preponderance of the evidence that James Mazareas violated § 23(b)(3) on three occasions: by officially acting with respect to the appointments to the Team and the Workshop, and his recommendation about the Transfer.

V. Order

Pursuant to the authority granted it by G. L. c. 268B, § 4(j), the Commission may impose a civil penalty of up to $2,000 for each violation of G. L. c. 268A. We consider mitigating and exacerbating factors in determining civil penalties.[40] Here, Mazareas disclosed in writing to the School Committee, albeit after the fact, that Jean was on the Workshop and he took steps to forestall her payments for the Workshop. We also note that the evidence does not suggest that Jean was not qualified to serve on the Team or the Workshop. We also consider, however, that Jean received approximately $9,518.25 additional compensation as a result of her services on

the Team and the Workshop and that the conflict law provided a clear way for him to have obtained approval, in advance, from his appointing authority.

Considering these circumstances, we order James Mazareas to pay $2.500.00 (two thousand, five hundred dollars) to the State Ethics Commission within thirty days of his receipt of this Decision and Order. This civil penalty consists of $1,000 for each violation of G. L. c. 268A, § 19 by his participating in the decision to appoint Jean to the Team and the decision to appoint her to the Workshop. We decline to impose a civil penalty in these circumstances for the violations of § 23(b)(3) where the violations are based on the same facts. Finally, we impose a $500 civil penalty for his violation of § 23(b)(3) with respect to the Transfer.

DATE: January 31, 2002

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[1] 930 CMR §§ 1.01(1)(a) *et seq.*

[2]930 CMR § 1.01(9)(e)(5).

[3] G. L. c. 268B, § 4(i); 930 CMR § 1.01(9)(m)(1).

[4]Counsel for Petitioner was not involved in any way in the Commission's deliberations.

[5]The Presiding Officer found both Jean's and Mazareas' testimony on these points to be credible.

[6]Iarrobino, whose testimony the Presiding Officer found credible, testified that Mazareas put together the Team. In addition, Mazareas stated in the Stipulation and in his Answer to the OTSC that the School Committee authorized him to create the Team.

[7]Stephen Upton, School Business Administrator for the Lynn Public Schools, whom the Presiding Officer found credible, testified that Mazareas appointed Jean to the Team. Although Mazareas denied that he decided who would be on the Team, he conceded at the hearing, after referring to his prior sworn deposition, that he testified in his deposition that he "picked [Team members] individually." He also adopted his deposition testimony about "Jean being on the committee, and . . . that she was on the committee for two or three weeks."

[8]Mazareas admitted this fact in his testimony during the hearing. [Q. . . . So you admit that you were the one who determined compensation, and you knew that your wife was a member of this transition team would have a financial in this matter - - interest in this matter; is that true? A. (No verbal response.) Q. If you could just respond verbally? A. Yes, yes.] He also admitted that he made the decision about what stipend the Team members would receive and that members of the Transition Team were not paid until he verbally asked the School Committee to allow him to give the Team school funds.

[9]Exhibit 18A is a memorandum dated April 8, 1998 from Mazareas to Selected Secondary Personnel, including Jean, about a meeting for invited Summer Workshop participants. Mazareas also signed Exhibit 20A, dated June 2, 1998, which describes the Workshop and includes Jean along with others in a list describing the estimated time and pay for the participants in the Workshop. Stephen Upton, the School Business Administrator, testified that

Mazareas "approved the listing of people [to serve on the Workshop] as a general course of business."

[10]The parties so stipulated.

[11]He admitted in his testimony that it was his understanding when "he started this process" that Jean would be compensated for the Workshop.

[12]"A school district shall [not] (i) employ a member of the immediate family of a superintendent . . . unless written notice is given to the school committee of the proposal to employ or assign such person at least two weeks in advance of such person's employment or assignment. As used in this section, 'immediate family' shall have the meaning assigned by subsection (e) of section one of chapter two hundred and sixty-eight A." G. L. c. 71, § 67.

[13]"Municipal employee, a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, ..." G. L. c. 268A, § 1(g).

[14] "Participate, participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise." G. L. c. 268A, § 1(j).

[15]"Particular matter, any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, ..." G. L. c. 268A, § 1(k).

[16]The term "knowledge" is not defined in c. 268A. "Knowledge" has been defined as "an awareness or understanding of a fact or circumstance." *Black's Law Dictionary, Seventh Edition.* Also defined as, "the fact or condition of possessing within mental grasp through instruction, study, research, or experience one or more truths, facts, principles, or other objects of perception." *Webster's Third New International Dictionary*, 1993.

[17]"Immediate family, the employee and his spouse, and their parents, children, brothers and sisters." G. L. c. 268A, § 1(e)

[18]"Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge . . . his immediate family . . . has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

> (b) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee." G. L. c. 268A, § 19.

[19]Webster's Third New International Dictionary, 1993.

[20]In the Stipulation, Mazareas stipulated, through his attorney, that he appointed Jean to the Team and to the Workshop. During the evidentiary hearing on May 4, 2001, counsel for Mazareas attempted, for the first and only time, to retract the stipulations about those appointments. Instead, Mazareas further stipulated to being the "appointing authority" for only the Workshop. Other evidence, as noted above, demonstrated that Mazareas appointed Jean to the Team. Moreover, counsel for Mazareas did not, either in his brief or during closing argument, continue to pursue the validity of the Stipulation. Considering the circumstances the parties described during the hearing about how they entered into the Stipulation, we decided to weigh the Stipulation in light of all supporting and contrary evidence, rather than give the Stipulation preclusive effect as to contrary evidence. *See Letherbee Mortgage Company, Inc. v. Cohen,* 37 Mass. App. Ct. 913, 916-17 (1994) *and compare Crittenton Hastings House of the Florence Crittenton League v. Board of Appeal of Boston*, 25 Mass. App. Ct. 704, 713 (1988).

[21]Without citing to the record, Respondent states in his brief, "In June 1998, Dr. Mazareas' wife, Jean, was selected to become a member of the transition team because of her expertise in staff development." If this were true, it would seem to undercut his argument that her being a member of the Team was a continuation of her work on the Internal Planning Committee.

[22]*EC-COI-84-96; EC-COI-84-98*("Where there is knowledge of the existence of private interests, and where it is obvious or reasonably foreseeable that one's private interests will be affected by one's official actions, then the provisions of § 19 are applicable."). *See also In re Khambaty*, 1987 SEC 318; *In re Geary*, 1987 SEC 305; *In re Cellucci*, 1988 SEC 346; *In re Cassidy*, 1988 SEC 371; *In re McMann*, 1988 SEC 379.

[23]*Graham v. McGrail,* 370 Mass. 133, 139 (1976) ("The Legislature in § 19(b) recognized that it might be proper to exempt some remote and inconsequential financial interests."); *EC-COI-89-19.*

[24]*See* note 9 *supra.*

[25]Emphasis added.

[26]The burden of proving whether Mazareas complied with the requirements of the § 19(b)(1) disclosure and written determination rests with Mazareas. *See In re Hebert,* 1996 SEC 800, 811-812 *and* authorities cited therein.

[27]The School Committee elected him Superintendent on May 20, 1998 and authorized him to assume the position as of June 6, 1998.

[28]Section 23(b)(3) of G. L. c. 268A provides, in pertinent:

> No current . . . employee of a . . . municipal agency shall knowingly, or with reason to know: . . . act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority . . . the facts which would otherwise lead to such a conclusion.

[29]*Scaccia v. State Ethics Commission,* 431 Mass. 351, 359 (2000) (emphasis added; citations omitted).

[30]*In re Flanagan,*1996 SEC 757, 763.

[31]*Id. See also In re Hebert*, 1996 SEC, 800, 810 (§ 23(b)(3) applies where a public employee does, or may perform, actions in his official capacity which will affect a party with whom he has a significant private relationship).

[32]*See* note 31*, supra*.

[33]*In re Hebert*, 1996 SEC 800, 811 ("The disclosure serves to let the public know the relevant facts and permits the appointing authority to review the situation and take whatever steps he may deem to be appropriate to protect the public interest.")

[34]Associate superintendents are appointed by the School Committee upon the recommendation of the superintendent.

[35]*PEL 97-2* (concludes that decision to approve changes to teacher eligibility list when daughter had a financial interest in that particular matter "also suggests a violation of § 23(b)(3)" because a reasonable person, knowing the relevant circumstances, could conclude that the subject participated to benefit her daughter and that she could be unduly influenced in the performance of official duties. "Thus, there is *reasonable cause* to believe that you violated § 23(b)(3)."). *See also EC-COI-93-17* (a selectman, who is also a teacher in his town, is prohibited under § 19 from participating in the appointment of the town manager because it will determine whether the town manager continues in on-going union negotiations about the teacher's contract and, to the extent § 19 does not prohibit his participation, he will be required to file a written disclosure under § 23(b)(3)).

[36]*See e.g., EC-COI-96-2.*

[37]*See* note 29 *supra.*

[38]*See In re Hebert,* 1996 SEC 800, 811-812.

[39]We note that G. L. c. 268A, § 23(d) provides, "Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section." Mazareas did not seek nor obtain an exemption under § 19(b)(1) for his participation in the decision to appoint Jean to the Team or for his participation in the decision to appoint Jean to the Workshop. Obtaining such an exemption under § 19(b)(1) would have also constituted a § 23(b)(3) disclosure for the same set of relevant facts. This statutory relationship further supports our conclusion that a § 23(b)(3) violation may occur under the same facts as a § 19 violation.

[40]*See e.g., In re Khambaty* 1987 SEC 318 (no fine imposed, Respondent's actions were adverse to his wife, "relatively minor violation"); *In re McMann* 1988 SEC 379 ($10,000 fine; School Committee member violated §§ 20 and 19 by selling more than $12,000 worth of doughnuts to school and voting to approve improper payments); *In re Griffin* 1988 SEC 383 ($500 fine for § 13 violation (county analog to § 19) for voting to approve fund transfer request that included a salary increase for his son); *In re Cellucci* 1988 SEC 346 ($1000 fine; although

Commission acknowledged that the maximum could have been $6000 for three violations, Respondent's legitimate motives for participating mitigated his desire to protect his family).